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Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions

Report of the Secretary-General

Summary

The present report is submitted in compliance with paragraph 15 of General Assembly resolution 66/101. It highlights arrangements in the Secretariat related to assistance to third States affected by the application of sanctions; the operational changes that have occurred in the light of the shift in focus in the Security Council and its sanctions committees towards targeted sanctions; and recent developments concerning the activities of the Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions.

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I. Introduction

1. In its resolution 66/101, the General Assembly requested the Secretary-General to submit a report to the Assembly at its sixty-seventh session on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions. The present report has been prepared in compliance with that request.

II. Measures for further improvement of the procedures and working methods of the Security Council and its sanctions committees related to assistance to third States affected by the application of sanctions

2. As noted in previous reports of the Secretary-General (A/62/206 and Corr.1, A/63/224, A/64/225, A/65/217 and A/66/213), the Chair of the Security Council Informal Working Group on General Issues of Sanctions transmitted the report of the Working Group (S/2006/997, annex) to the Security Council. Several of the recommendations and best practices set out in that report related to improved sanctions design and monitoring, but the report did not contain any recommendations that explicitly referred to ways to assist third States affected by the unintended impact of sanctions. By its resolution 1732 (2006), the Council decided that the Working Group had fulfilled its mandate as contained in document S/2005/841, took note with interest of the best practices and methods set out in the report of the Working Group and requested its subsidiary bodies to take note of them also.

3. During the period under review, and in keeping with the shift of the Security Council from comprehensive economic sanctions to targeted sanctions, there were no pre-assessment reports or ongoing assessment reports concerning the likely or actual unintended impact of sanctions on third States.

4. In a periodic report delivered to the Council on 10 May 2012, the Chair of the Committee established pursuant to resolution 1970 (2011) concerning Libya stated that the Committee had answered a total of 25 requests for guidance.[1] In several of those requests, the Committee's advice was sought on how to minimize the potential unintended consequences of the assets freeze in third States.

5. In its final report submitted pursuant to resolution 1985 (2011) (S/2012/422, annex), the Panel of Experts established pursuant to resolution 1874 (2009), which monitors sanctions and assists the Committee established pursuant to resolution 1718 (2006) in carrying out its mandate, recommended that the Committee, with the assistance of the Panel, should consider the financial and technical challenges that inspections, seizure and disposal of prohibited items presented to Member States and explore possible solutions.

6. In nearly every case in which the Security Council has decided that States shall freeze the assets owned or controlled by designated individuals and entities, the Council has also adopted exceptions by which States can signal to the relevant sanctions committee their intention to authorize access to frozen funds for a variety

[1] See S/PV.6768.

of basic and extraordinary expenses.[2] Such expenses can include tax payments, insurance premiums and public utility charges; reasonable professional fees and reimbursement of expenses associated with the provision of legal services; and fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources.

7. Furthermore, in paragraph 15 of its resolution 1737 (2006), and paragraph 21 of its resolution 1970 (2011), the Security Council decided that the assets freeze imposed under those resolutions would not prevent a designated person or entity from making payment due under a contract entered into prior to the listing of such a person or entity, provided that certain conditions had been met, and after notification by the relevant States to, respectively, the Committee established pursuant to resolution 1737 (2006) and the Committee established pursuant to resolution 1970 (2011) of the intention to make or receive such payments or to authorize, where appropriate, the unfreezing of funds, other financial assets or economic resources for that purpose, 10 working days prior to such authorization.

8. To date, through his 90-day reports to the Security Council, the Chair of the Committee established pursuant to resolution 1737 (2006) has informed the Council of a total of 57 such notifications received.[3] Similarly, in periodic reports to the Council, the Chair of the Committee established pursuant to resolution 1970 (2011) informed the Council of a total of 41 notifications received.[4] Thus the provisions of paragraph 15 of resolution 1737 (2006) and paragraph 21 of resolution 1970 (2011), in addition to the exceptions to the assets freeze for basic and extraordinary expenses,[2] can help to mitigate economic burdens arising from the implementation of Council assets freezes.

III. Recent developments related to the role of the General Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions

9. In its resolution 59/45, the General Assembly reaffirmed the important roles of the Assembly and the Economic and Social Council in the area of assistance to third States confronted with special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Security Council. Should consultations be requested by those States, the Assembly and the Economic and Social Council will mobilize and monitor, as appropriate, the economic assistance efforts of the international community and the United Nations system on behalf of third States affected by sanctions.

[2] See Security Council resolutions 1452 (2002) (as amended by resolution 1735 (2006)), 1532 (2004), 1572 (2004), 1591 (2005), 1596 (2005), 1636 (2005), 1718 (2006), 1737 (2006), 1844 (2008), 1907 (2009) and 1970 (2011) (as updated by resolution 2009 (2011)).

[3] See S/PV.5702, 5743, 5807, 5853, 5909, 5973, 6142, 6235, 6280, 6384, 6442, 6502, 6563, 6607, 6697, 6737 and 6786. The 90-day report of 9 September 2009, which is also relevant, was not delivered at a public meeting; the text is however available on the Committee's website: www.un.org/sc/committees/1737.

[4] See S/PV.6566, 6622 and 6698.

A. General Assembly

10. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization met from 21 to 28 February and on 1 March 2012. The report of the Special Committee contains a summary of the discussions on the question of the implementation of the Charter provisions related to assistance to third States affected by sanctions (A/67/33, chap. II.A).

B. Economic and Social Council

11. At the opening meeting of its substantive session of 2012, on 2 July 2012, the Economic and Social Council approved its programme of work (E/2012/L.5) and decided to include in the agenda of the general segment of the session a sub-item, 13 (i), entitled "Assistance to third States affected by the application of sanctions". No advance documentation was requested. The Council considered the matter on 25 July 2012 but took no action under that sub-item.

IV. Arrangements in the Secretariat related to assistance to third States affected by the application of sanctions

12. In accordance with the relevant resolutions of the General Assembly,[5] the competent units within the Secretariat have maintained their capacity to monitor information pertaining to any special economic problems in third States arising from the application of preventive or enforcement measures imposed by the Security Council, to evaluate any appeals to the Council made by such affected third States under the provisions of Article 50 of the Charter, and to identify solutions to the special economic problems of those States.

13. As noted in previous reports (A/62/206, A/63/224, A/64/225, A/65/217 and A/66/213), the need to explore practical and effective measures of assistance to affected third States has been reduced considerably because the shift from comprehensive to targeted sanctions has led to significant reductions in unintended adverse impacts on non-targeted countries. In fact, no official appeals by third States have been conveyed to the Department of Economic and Social Affairs to monitor or evaluate since June 2003.

14. The shift to targeted sanctions has also implied that changes need be introduced to the methodological approaches used to assess the economic problems of third States caused by this type of sanction. These changes would involve detailed case-by-case assessments of targeted sanctions and the possible adverse economic, social and humanitarian impact in individual countries, both those that were targeted and those that were not. Some technical methods used to review and assess special economic problems of third States affected by sanctions are discussed in detail in the report of the Informal Working Group of the Security Council on General Issues of Sanctions (S/2006/997, annex), the Sanctions Assessment

[5] See resolutions 50/51, 51/208, 52/162, 53/107, 54/107, 55/157, 56/87, 57/25, 58/80, 59/45, 60/23, 61/38, 62/69, 63/127, 64/115, 65/31 and 66/101.

Handbook[6] and the Field Guidelines for Assessing the Humanitarian Implications of Sanctions[7] published by the Inter-Agency Standing Committee.

15. In the absence of Article 50 appeals conveyed to the Department of Economic and Social Affairs since 2003, little progress could be made in developing and applying specific methodologies to make such assessments on a case-by-case basis. The Department will, nonetheless, continue to seek opportunities for collaborative work with other relevant parts of the Secretariat, and with other international organizations and academic institutions, so as to keep abreast of similar and related methodologies assessing the impact of sanctions more in general.

[6] Available from http://ochanet.unocha.org/p/Documents/IASCSanctionsHB2004.pdf.

[7] Available from www.humanitarianinfo.org/iasc/downloaddoc.aspx?docID=4424&type=pdf.